



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV 30 2010

REPLY TO THE ATTENTION OF:

WW-16J

U.S. Army Corps of Engineers, Louisville District
James M. Townsend, Chief
Regulatory Branch
P.O. Box 50
Louisville, Kentucky 40201-0059

Re:Pre-Construction Notification-LRL-2010-438/ Lily Group, Inc. Landree Mine

Dear Mr. Townsend:

The United States Environmental Protection Agency has reviewed the subject pre-discharge notice (PDN) issued on November 22, 2010. The applicant, Lily Group (Lily), proposes to impact "waters of the United States" in association with their underground mining and surface mining operations at the Landree Mine (S-363). The proposed project is located South of Jasonville in Greene County, Indiana. The proposed impacts are 4,985 linear feet of ephemeral streams, 1,833 linear feet of intermittent streams, and 3.3 acres of open water within the Busseron Creek Watershed.

In addition to the PDN, EPA has reviewed the Clean Water Act Section 404 Permit Application for Landree Mine. EPA requested and was granted an extension until December 1, 2010 to review and comment on this project. We offer the following comments and questions based on our review:

- Impacts within the surface mining permit S-363 area are due to the extraction of coal and clay. EPA does not believe that the use of Nationwide Permit 50 is appropriate for these impacts. However, EPA understands that a portion of the impacts to waters are to create the box cut which will provide access to the underground mining section. The impacts resulting from the box cut construction should be covered under a Nationwide Permit 50. In light of this, EPA requests that the Corps re-evaluate the project to determine whether NWP 50 should be used in conjunction with NWP 21 or whether the project should be evaluated under the individual permit process.
- The applicant must provide a map of the mine design/plan that includes information about the permit limits, location of diversion ditches, top soil/overburden stockpiles, coal outcrop, aquatic resources, stream buffer zone, mining sequence, sources of hydrology such as springs and seeps, water quality monitoring stations, location of sediment ponds, etc. This is necessary to

appropriately document the types and locations of features onsite and applicability of the proposed permitting mechanism.

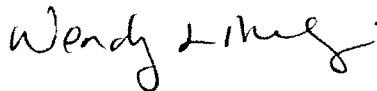
- EPA requests a more detailed explanation regarding the location of the proposed sediment basins, specifically why the basins are located in stream channels. The possibility of moving the sediment basins higher in the watershed to reduce stream impacts must be considered.
- This project falls within the Mud Creek and Big Branch sub watersheds of Busseron Creek which are on the State of Indiana's 303(d) list of impaired waters. The listed impairments are sulfates and total dissolved solids. The applicant must demonstrate how this project will not cause or contribute to further impairment to the water bodies.
- EPA is concerned over the potential misclassification of the flow regimes for particular stream reaches. Based on the stream assessment worksheets provided, several streams listed as ephemeral had flowing water within the channel despite the most recent rain event being recorded more than seven days prior. Typically, ephemeral streams only flow in response to precipitation events or snow melt. EPA requests that the flow regimes of the streams be reevaluated based on information provided in the application. Specifically, streams PC02S, PC03S03E, and PC03S3W appear to be at least in part intermittent streams.
- Further, it is unclear how stream PC03S will be impacted both upstream and downstream of parcel 18-8-7-17. EPA requests details on how this middle reach will not be affected by the mining operations.
- The PDN mentions that biological sampling was conducted on site and was included in the permit application. However, there is no biological monitoring report included in the package provided to EPA. EPA understands that southern Indiana experienced below average rainfall during the summer of 2010, and biological sampling may have been difficult. Biological monitoring, along with water chemistry and physical assessments, must occur prior to the initiation of mining activities to establish baseline conditions, during the mining activities to assist in determining potential impacts to water quality and aquatic habitat, and must continue at least five years after the completion of stream restoration and site reclamation activities at the mine site where appropriate to determine mitigation success.
- The stream recreation on PC03S is proposed to be reconstructed in an unnatural fashion (right angles) to avoid the box cut. EPA recommends that this section be revised to create a more natural stream corridor.
- EPA also recommends that the constructed stream PC01S01E have a larger wooded buffer that is at least 25 feet wide on each side of the stream channel.
- Financial assurances are required to ensure the success of mitigation in addition to those required for reclamation by the SMCRA performance bond. The applicant should provide information regarding the financial assurances that will be in place to specifically ensure the success of the mitigation. Lily must include details on the dollar amount, type(s) of assurance (ex. performance bond) and release conditions. The account must be payable to a designee of the Corps or a standby trust agreement. Estimates of the construction, monitoring, and maintenance costs of mitigation activities will be necessary. Without this information, the Corps

cannot evaluate whether the financial assurances are sufficient to cover any potential mitigation deficiencies.

- The applicant should define success criteria in the monitoring and mitigation plan. Specifically, they need to describe the methodologies that will be used to evaluate the mitigation streams during the monitoring period. Information should include, but not be limited to, evaluations of physical habitat and chemical and biological monitoring. These measures should be in place to demonstrate that post mining conditions will be similar or better than pre-mining conditions. The results must be included in the monitoring reports submitted to the Corps.

In conclusion, EPA objects to the issuance of a permit for this project as proposed because additional information is needed to assess the project's impacts and to determine whether the project qualifies for coverage under NWP 50. Please notify us of Lily's response to the comments outlined above and any subsequent changes to the permit application. Thank you for the opportunity to provide comments on the public notice and permit documents. If you have any questions please contact Andrea Schaller at (312)866-0746.

Sincerely,



Peter Swenson, Chief
Watersheds and Wetlands Branch

cc: Randy Braun, Chief
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